

DEC 23 1976

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

No. 76-730

WILLIAM T. ADKINS

Petitioner,

v.

I. T. O. CORPORATION OF BALTIMORE AND
LIBERTY MUTUAL INSURANCE COMPANY

and

NATIONAL ASSOCIATION OF STEVEDORES,
Respondents.

**MEMORANDUM OF RESPONDENTS I. T. O.
CORPORATION OF BALTIMORE AND
LIBERTY MUTUAL INSURANCE COMPANY**

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of Baltimore and Liberty Mutual
Insurance Company

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Respondents I. T. O. Corporation of Baltimore and
Liberty Mutual Insurance Company agree with Petitioner
and with Respondent National Association of Stevedores
that a Writ of Certiorari should issue, and urge the
Court to grant the Petition.

Respondents are aware that on December 6, 1976, the Court granted Petitions for Certiorari in two similar cases from the Court of Appeals for the Second Circuit,¹ and that Petitions for Certiorari are pending in six other cases, from the First, Fourth and Fifth Circuits.² The central issue in all of these cases is: To what extent, if any, did the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act³ extend coverage to employees of marine terminal operators where the employees perform exclusively land-based functions? There are, however, important factual differences between these cases, and apparently important differences as to the completeness *vel non* of the respective records. The instant case offers a particularly full and revealing record of the various terminal operations at issue.

The record in the instant case contains a survey by the National Association of Stevedores, a party hereto,

¹ *Northeast Marine Terminal Company, Inc., et al. v. Caputo, et al.*, No. 76-444; *International Terminal Operating Co., Inc. v. Blundo, et al.*, No. 76-454.

² *John T. Clark & Son of Boston, Inc., et al. v. Stockman, et al.*, No. 76-571; *Marine Terminals, Inc., et al. v. Brown and Harris*, No. 76-706; *P. C. Pfeiffer Co., Inc., et al. v. Ford, et al.* and *Ayers Steamship Company, et al. v. Bryant, et al.*, No. 76-641.

³ 33 U.S.C. §902 (3) (4), 903 (a).

of the terminal practices in all the major ports in the United States. Because of the uniquely complete record, we submit that the instant case offers this Court additional, meaningful help in deciding the important questions involved.

There is a second reason why, we think, the Petition here should be granted and the case consolidated with *Caputo* and *Blundo*. This Court will be faced with the task of establishing a rationale for determining the dividing line between federal and state coverage, a task which is infinitely more difficult than that performed by the Court in *Nacirema Operating Company, Inc. v. Johnson*, 396 U.S. 212 (1969), where the dividing line was merely the water's edge. As is apparent from each of the opinions in these cases, in the First, Second, Fourth and Fifth Circuits, the controversy is framed in terms of whether the dividing line is the "point of rest" of the cargo and, if so, where that "point of rest" is. The instant case was the first one to be argued in and decided by any Court of Appeals. The briefs and oral arguments presented and developed the "point of rest" theory for the first time in any court. At the first argument before the three-judge panel, the "point of rest" approach was adopted by the majority and rejected by the dissenter. On re-argument *en banc*, the same

result was reached in *Adkins* by a 4-2 vote, the three panel judges adhering to their prior position as to "point of rest" and a fourth judge concurring in the result. In subsequent arguments and decisions in the First, Second and Fifth Circuits, the question has basically been whether or not the Fourth Circuit majority was right. The other courts have held that it was wrong, although Judge Lumbard, dissenting in the Second Circuit, agreed with the Fourth.

Our point is that, since this Court will be asked to pass upon the "point of rest" rationale, it should have before it the record, arguments, and other important elements of the first case under the 1972 Amendments in which it was judicially recognized.

For these reasons, we agree with Petitioner and with Respondent National Association of Stevedores that this Petition should be granted.

Respectfully submitted,

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